



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jack Faucett Associates--Reconsideration, Protest, and Costs

File: B-278961.2; B-278961.3

Date: April 17, 1998

Jack G. Faucett for the protester.
Mike Colvin, Department of Health & Human Services, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency reasonably canceled request for quotations where it determined--after reviewing a protest of a purchase order--the specifications did not include certain required material tasks and omitted necessary information which the agency had intended to provide to indicate how quotations would be evaluated.
2. Dismissal of protest as academic is affirmed where appropriate corrective action was taken by the contracting agency prior to the filing of the agency's protest report on the protest; reimbursement of protester's costs of filing and pursuing protest will not be recommended where the agency takes corrective action on or before the agency report due date.

DECISION

Jack Faucett Associates (JFA) protests the cancellation of request for quotations (RFQ) No. 26398Q0059, issued by the Department of Health and Human Services for services in support of the National Institutes of Health Undergraduate Scholarship Program. JFA also requests reconsideration of our February 2, 1998, dismissal of its protest against the issuance of a purchase order under that RFQ, and requests that we recommend payment by the agency of JFA's costs of filing and pursuing its protest, including attorneys' fees.

We affirm the dismissal of JFA's protest, deny JFA's protest of the cancellation of the RFQ, and dismiss JFA's request for costs.

JFA filed its initial protest on January 7, 1998, challenging the issuance of a purchase order to Social and Scientific Systems, Inc. (SSSI) on the grounds that the agency improperly applied technical evaluation factors when the RFQ was issued on a price-only basis, and improperly issued the purchase order to a higher-priced vendor. In reviewing that protest, the contracting agency determined that certain required material tasks were inadvertently omitted from the RFQ statement of work

and that the RFQ did not contain the intended evaluation factors. The contracting agency concluded that it was necessary to terminate the purchase order, cancel the solicitation, and resolicit the requirement on a competitive basis after revising the statement of work and evaluation factors to ensure that they are appropriate to satisfy the agency's needs. The proposed corrective action was reported to our Office in a letter filed on January 30, 1998, 10 days before the due date for the agency protest report.

Thereupon, we dismissed JFA's protest as academic, without obtaining any comments because the agency had resolved JFA's objection by terminating the purchase order and resoliciting the procurement. Upon receiving this dismissal, JFA filed a reconsideration request, arguing that it was improper for us to dismiss JFA's protest without giving it an opportunity to comment on the agency's proposed corrective action. JFA also protested the cancellation of the solicitation, asserting that the procurement was not flawed; rather, JFA contends that the purchase order decision was improper and that the purchase order should be issued to JFA as the low-priced vendor.

JFA's reconsideration request is without merit. Our Bid Protest Regulations provide that we may dismiss a protest at the time the propriety of a dismissal becomes clear based upon information provided by the contracting agency. 4 C.F.R. § 21.5 (1997). There is no requirement that we first obtain comments from the protester. High Point Sec., Inc.--Recon. and Protest, B-255747.2, B-255747.3, Feb. 22, 1994, 94-1 CPD ¶ 169 at 2. We dismissed JFA's protest after the agency notified our Office that it was cancelling the purchase order and would resolicit the requirement under a revised solicitation. The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-3556 (West Supp. 1997). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Management Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299 at 4. When an agency cancels a purchase order and resolicits for its needs, the agency action renders the instant protest academic. It is not our practice to consider academic questions. East West Research, Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379 at 2.

Although JFA asserts that one reason it filed its protest was to highlight the serious ongoing procurement deficiency issues at the National Institutes of Health's Small Purchase Office, our Office's jurisdiction does not involve investigating an agency's procurement operation but is limited to considering protests involving solicitations actually issued by federal agencies and awards made or proposed under those solicitations. Consequently, we consider only protests against specific procurement actions and will not render what would be, in effect, an advisory decision. Events Analysis, Inc.--Recon., B-220080.2, Nov. 22, 1985, 85-2 CPD ¶ 589 at 1.

JFA now protests that the solicitation should not have been canceled and that a purchase order should have been issued under the original solicitation to the

low-priced vendor. JFA asserts that the expansion of the scope of work was not a legitimate reason to cancel the solicitation, as evidenced by the fact that the cancellation did not occur until after JFA filed its protest.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. Shasta Transfer & Storage, B-261172, July 28, 1995, 95-2 CPD ¶ 48 at 2. The fact that the cancellation occurred after JFA filed its protest does not by itself evidence that the cancellation was improper; an agency may properly cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not canceled until after offers (or, as here, quotations) have been submitted and evaluated. See PAI Corp. et al., B-244287.5 et al., Nov. 29, 1991, 91-2 CPD ¶ 508 at 4.

Here, the agency's actions were reasonable. The agency reports that it was not until it reviewed JFA's protest that it first recognized that certain material required tasks were omitted from the RFQ's statement of work. The omitted tasks, included maintaining a database of applicants and requestors for the scholarships, maintaining an internet web page to disseminate scholarship information, and recruitment activities. Additionally, the agency reports that it intended to conduct a competitive procurement and issue a purchase order in part on the basis of a relative evaluation of technical factors. Since the original RFQ contained no information as to how this selection would be made, the agency determined that a new solicitation including appropriate evaluation factors was needed. The decision to cancel the purchase order and the solicitation was reasonable because the RFQ, as issued, did not adequately define the agency's needs and might not have resulted in an award that was most advantageous to the government.

Regarding protest costs, our Bid Protest Regulations, 4 C.F.R. § 21.8(e), provide that where an agency takes corrective action in response to a protest, we may recommend that the agency pay protest costs, including attorneys' fees; however, we will make such a recommendation only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. CSL Birmingham Assocs.; IRS Partners--Birmingham--Entitlement to Costs, B-251931.4, B-251931.5, Aug. 29, 1994, 94-2 CPD ¶ 82 at 3.

Here, the agency took corrective action 10 days before the date on which it was required to file the agency report in our Office. We consider this to have been reasonably prompt under the circumstances. Because our Regulation is designed to encourage agencies to take prompt corrective action, where appropriate, as a general rule, if an agency takes corrective action in response to a protest by the due date of its protest report, we regard such action as prompt and decline to consider a request to recommend reimbursement of protest costs. CDIC, Inc.--Entitlement to Costs, B-277526.2, Aug. 18, 1997, 97-2 CPD ¶ 52 at 2. Accordingly, we have no basis to recommend that JFA be reimbursed for its bid protest costs.

The protest is denied, our prior dismissal is affirmed, and the request for a recommendation of reimbursement of costs is dismissed.

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